Court File No.: 31-2875614
Estate No.: 31-2875614

*ONTARIO*
**SUPERIOR COURT OF JUSTICE**
**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF**
**CANNTRUST HOLDINGS INC.**

# FACTUM OF CANNTRUST HOLDINGS INC.
**(Approval of BIA Proposal)**
**(Returnable November 28, 2022)**

November 23, 2022


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## PART I—INTRODUCTION

1. CannTrust Holdings Inc. (“**CannTrust Holdings**”), which previously went through a CCAA[1] restructuring process, is insolvent and has concluded it is appropriate to wind-down.

2. On this motion, CannTrust Holdings seeks various relief to facilitate that process including Court approval of a proposal to its creditors under the BIA (as amended from time to time, the “**Proposal**”), approval of articles of reorganization, and an order that CannTrust is not required to call an annual general meeting of its shareholders (“**AGM**”) before its dissolution.

3. At this time, CannTrust Holdings has limited assets, consisting of minimal Residual Assets and a 10% equity interest in Phoena Holdings Inc. (“**Phoena Holdings**”), which in turn owns all common shares of Phoena Inc. (formerly CannTrust Inc.) (“**Opco**”). Its liabilities, which dwarf the value of its assets, consist of secured obligations (through its liability as a guarantor of secured credit facilities provided to Opco, Phoena Holdings and others), unsecured debt to Phoena Holdings, and smaller amounts owing to two service providers and the Proposal Trustee and its counsel.

4. The wind-up process contemplated by CannTrust Holdings will:

(a) satisfy or release its secured and unsecured obligations, leaving it with no liabilities and no assets other than the 10% equity interest in Phoena Holdings (the “**Phoena Shares**”); and

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Affidavit of Greg Guyatt sworn November 17, 2022, Tab 2 of the Motion Record of CannTrust Holdings Inc. (“**Guyatt Affidavit**”) at para. 5.

(b) implement various changes that will enable CannTrust Holdings to distribute its remaining asset – the Phoena Shares – to its shareholders (the "**CannTrust Shareholders**") in an economically-feasible manner and then dissolve.[2]

5. To effect this, CannTrust Holdings is seeking on this motion, among other things:

(a) approval of the Proposal, which was unanimously accepted at the meeting of creditors on November 4, 2022; and

(b) approval of the articles of reorganization to be filed substantially in the form attached as Schedule "B" to the proposed form of Order (the "**Articles of Reorganization**"), which will, among other things:

(i) establish terms of the distribution of the Phoena Shares to CannTrust Shareholders in an economically feasible manner; and

(ii) authorize the directors of CannTrust Holdings to consent to its dissolution.

6. In addition, CannTrust Holdings seeks an order that it not be required to call an AGM before its dissolution, subject to further order of this Court. The deadline to call an AGM has previously been extended by this Court. The current deadline is November 30, 2022.

7. The structure of the proposed relief will facilitate both (a) the distribution of the Phoena Shares to CannTrust Shareholders who would otherwise have no recovery in a liquidation or bankruptcy, and (b) the wind down and liquidation of CannTrust Holdings. It accomplishes both of these goals in a manner that addresses various restrictions, including

[2] Guyatt Affidavit at para. 48.

ensuring that CannTrust Holdings: is solvent at the time of making a distribution to shareholders (after implementing the Proposal); can distribute the Phoena Shares without a prospectus; and can make the distributions and dissolve in an economically feasible manner.

## PART II—THE FACTS

8. The facts in support of this motion are more fully set out in the Guyatt Affidavit and the Second Report of the Proposal Trustee.

### *A. BACKGROUND*

#### *(i) CCAA Proceedings*

9. Prior to June 2019, CannTrust Holdings and its subsidiaries at the time (the "**CannTrust Group**") operated as a licensed producer of cannabis in Canada. The outstanding common shares of CannTrust Holdings were listed for trading on the Toronto and New York stock exchanges (the "**Stock Exchanges**").[3]

10. In the summer of 2019, the CannTrust Group was found to be cultivating and storing cannabis contrary to applicable laws. Its cannabis licences were partially suspended by Health Canada and it had to cease sales and production of cannabis.[4]

11. Following these events, individual actions and securities class actions were commenced in the United States and Canada against CannTrust Holdings claiming in excess of $500 million in damages (the "**Actions**"). The auditor of CannTrust Holdings withdrew its

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[3] Guyatt Affidavit at para. 11.

[4] Guyatt Affidavit at para. 12.

audit report on CannTrust Holdings' financial statements for the year ended December 31, 2018. CannTrust Holdings has not filed any further financial statements since May 2019.[5]

12. On March 31, 2020, the CannTrust Group commenced restructuring proceedings under the CCAA.[6]

13. On April 13, 2020, the Ontario Securities Commission (the "**OSC**") issued a cease trade order in respect of CannTrust Holdings (the "**CTO**") as a result of CannTrust Holdings' failure to file certain periodic disclosure required by Ontario securities legislation.[7] CannTrust Holdings' common shares were subsequently delisted from the Stock Exchanges.[8]

14. On January 5, 2022, CannTrust Holdings implemented its CCAA Plan, which settled the Actions and pursuant to which:

(a) cash contributions were made to a trust established for the benefit of Securities Claimants' by CannTrust Holdings and the other settlement parties;

(b) the Actions were dismissed as against CannTrust Holdings and the other settlement parties;

(c) all General Unsecured Claims against CannTrust Holdings were paid in full;

(d) CannTrust Holdings was released from the Released Claims; and

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[5] Guyatt Affidavit at para. 14.
[6] Guyatt Affidavit at para. 15.
[7] Guyatt Affidavit at para. 16.
[8] Guyatt Affidavit at para. 17.

(e) the existing CannTrust Common Shares remained outstanding.[9]

### *(ii) Internal Reorganization, Investment Transaction and CCAA Exit*

15. Prior to implementation of the CCAA Plan, the CannTrust Group had conducted an internal reorganization (approved by the Court) which, in effect, had Phoena Holdings "inserted" between CannTrust Holdings and Opco as an intermediate holding company.[10]

16. Although the CCAA Plan addressed substantially all of the liabilities of CannTrust Holdings, it did not include measures such as new financing necessary for the continued operation of the business of the CannTrust Group, conducted primarily by Opco which at the time was a direct wholly-owned subsidiary of CannTrust Holdings.[11]

17. In February 2022, after implementation of the CCAA Plan but while still under Court protection, the CannTrust Group found new investment partners and entered into a transaction whereby the investors agreed to acquire a 90% equity interest in Phoena Holdings (the "**Investment Transaction**"), leaving CannTrust Holdings with a remaining 10% equity interest in Phoena Holdings.[12] Some of the investors also agreed to provide interim secured financing until closing.[13]

18. On March 15, 2022, CannTrust Holdings completed the Investment Transaction and emerged from the CCAA Proceedings.[14]

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[9] Guyatt Affidavit at para. 20.
[10] Guyatt Affidavit at para. 23.
[11] Guyatt Affidavit at para. 21.
[12] Guyatt Affidavit at para. 28.
[13] Guyatt Affidavit at para. 29.
[14] Guyatt Affidavit at para. 31.

19. After emerging from the CCAA Proceedings, CannTrust Holdings hoped to complete the steps necessary to either (i) hold an AGM and apply to the OSC to have the CTO revoked (which would require CannTrust Holdings to restate some of its historical audited annual financial statements and prepare other annual audited and interim unaudited financial statements) or (ii) distribute its Phoena Holdings shares to CannTrust Shareholders pursuant to a plan of arrangement under the OBCA, with Phoena Holdings subsequently seeking to obtain a stock exchange listing for the Phoena Holdings common shares.[15]

***(iii) CCAA Relief from Reporting Obligations***

20. During the CCAA Proceedings, the Initial Order authorized the CannTrust Group to incur no further expenses in relation to any financial statements, or other securities filings.[16]

21. On September 16, 2020, the Court issued a further order (as extended from time to time, the "**AGM Deadline Extension Order**") extending the time for CannTrust Holdings to call an AGM to a date no later than 120 days after the end of the CCAA stay period.[17]

22. Upon emergence from CCAA protection in March 2022, CannTrust Holdings' independent auditor advised that it was not possible for the financial statements to be completed in time for an AGM to be called by the extended deadline (i.e. by July 13, 2022).[18]

23. On July 7, 2022, the Honourable Justice Penny granted an extension order, giving CannTrust Holdings until no later than November 30, 2022 to convene an AGM.[19]

[15] Guyatt Affidavit at para. 33.
[16] Guyatt Affidavit at para. 35.
[17] Guyatt Affidavit at para. 36.
[18] Guyatt Affidavit at para. 39.
[19] Guyatt Affidavit at para. 41.

## *B. CANNTRUST HOLDINGS INSOLVENCY AND DECISION TO WIND DOWN*

24. Following the extension order, CannTrust Holdings continued the work necessary to prepare financial statements, hold an AGM and seek the revocation of the CTO.[20]

25. However, by October 2022, CannTrust Holdings concluded that it was not feasible in the remaining time before November 30, 2022 to complete the necessary financial statements, obtain an audit opinion from its auditor and hold its AGM.[21]

26. More fundamentally, CannTrust Holdings is insolvent and cannot afford to complete the audit and other work, nor can it afford to seek the revocation of the CTO.[22]

27. As a holding company, CannTrust Holdings does not have any operating revenues and has been operating at a loss for years. As of the date it commenced these BIA proceedings, it had the following liabilities:

(a) about $50,000 of ordinary course payables owing to two service providers;

(b) about $25.5 million in aggregate owing to Phoena Holdings and its subsidiaries;

(c) liability to the Proposal Trustee and counsel for CannTrust Holdings for fees relating to these proceedings and the development of the Proposal; and

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[20] Guyatt Affidavit at para. 42.
[21] Guyatt Affidavit at para. 43.
[22] Guyatt Affidavit at para. 44.

(d) liability as a guarantor of the secured credit facilities provided to Phoena Holdings, Opco and their subsidiaries by Cortland and the Investor Lenders.[23]

28. Following the implementation of the CCAA Plan and the Investment Transaction, CannTrust Holdings' remaining assets are limited and of modest value. They consist of the Phoena Shares and, as described in the Guyatt Affidavit, the Residual Assets.[24]

29. In the circumstances, CannTrust Holdings determined that the Proposal and related relief would help it effect an efficient and orderly wind down.[25]

## *C. THE PROPOSAL*

### *(i) Terms of the Proposal*

30. The Proposal contemplates that:[26]

(a) CannTrust Holdings will deposit sufficient funds with the Proposal Trustee to fund the cash payments and distributions contemplated by the Proposal;

(b) Preferred Claims (if any) will be paid in full;

(c) Unsecured Claims, other than claims of Phoena Holdings and its subsidiaries (collectively, the "**Phoena Claims**"), will be paid in full; and

[23] Guyatt Affidavit at para. 46.

[24] Guyatt Affidavit at para. 47.

[25] Guyatt Affidavit at para. 49.

[26] All capitalized terms in this section that are not otherwise defined herein shall have the meanings ascribed to them in the Proposal.

(d) the Phoena Claims will be satisfied in full by the transfer of the Residual Assets or their proceeds to Phoena Holdings.[27]

31. The Proposal does not affect the secured claims of Cortland or the Investor Lenders, each of whom has consented to the Proposal and agreed to release its guarantees and security to facilitate the Proposal.[28]

32. After the payment, settlement or release (as applicable) of the claims described above, CannTrust Holdings will no longer have any liabilities and will no longer have any assets except the Phoena Shares.[29]

33. The Proposal provides that once the liabilities have been addressed, the Phoena Shares will be distributed to CannTrust Shareholders on the basis of one Phoena Share for each CannTrust Common Share held by a CannTrust Shareholder, subject to the following:

(a) only CannTrust Shareholders holding at least 10,000 CannTrust Common Shares qualify for a distribution of Phoena Shares;

(b) any distribution of Phoena Shares to a CannTrust Shareholder who is a person that is not Canadian or a U.S. person will be subject to CannTrust Holdings obtaining an opinion from qualified and independent securities counsel that such distribution is exempt from any requirement to prepare, file or deliver a prospectus or similar document;

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[27] Guyatt Affidavit at para. 50.

[28] Guyatt Affidavit at paras. 51-52.

[29] Guyatt Affidavit at para. 53.

(c) no distribution will be made to a shareholder that holds their CannTrust Common Shares in any registered retirement savings plan or other form of registered savings vehicle for which the Phoena Shares do not qualify as a permitted investment or a "qualified investment" within the meaning of the *Income Tax Act* (Canada), as applicable;

(d) the distribution will be made on account of capital; and

(e) any Phoena Shares not so distributed will be returned to Phoena Holdings for cancellation without any payment to CannTrust Holdings or CannTrust Shareholders.[30]

34. To enable the distribution of Phoena Shares to occur in this manner, CannTrust Holdings intends to amend its articles in accordance with the Articles of Reorganization.[31]

***(ii) Proposal Process***

35. On October 18, 2022, CannTrust Holdings commenced these proceedings by filing a copy of its original Proposal with the Official Receiver.[32]

36. On October 19, 2022, CannTrust Holdings issued a press release to give notice to creditors, shareholders and others that it had commenced BIA proposal proceedings and describing the terms of the Proposal.[33]

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[30] Guyatt Affidavit at para. 54.
[31] Guyatt Affidavit at para. 55.
[32] Guyatt Affidavit at para. 61.
[33] Guyatt Affidavit at para. 63.

37. On November 3, 2022, CannTrust Holdings filed its first amended and restated Proposal. The purposes of the amendments were (i) to clarify certain matters relating to the distribution of the Phoena Shares and the transfer of the Residual Assets to Phoena Holdings, and (ii) to allow greater flexibility in respect of the timing of the dissolution of CannTrust Holdings (to avoid losing the opportunity to pursue an HST refund upon its dissolution).[34]

38. The first amended and restated Proposal was accepted unanimously by the creditors at the meeting of creditors on November 4, 2022.[35]

39. On November 16, 2022, CannTrust Holdings issued another press release, announcing that the Proposal had been accepted unanimously by creditors at the meeting of creditors and advising that the Court approval hearing was scheduled for November 28, 2022.[36]

40. In accordance with section 7.2 of the Proposal, CannTrust Holdings is proposing to make further clarifying amendments to the Proposal by way of a second amended and restated proposal. Section 7.2 permits CannTrust Holdings to make amendments after the meeting of creditors with Proposal Trustee consent and approval of the Court.[37]

41. The purposes of the further amendments are to correct an error in the number of outstanding CannTrust Common Shares in the definition of "CannTrust Shares" and to add further clarifying details regarding the basis upon which the Phoena Shares will be distributed to CannTrust Shareholders.[38]

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[34] Guyatt Affidavit at para. 65.
[35] Guyatt Affidavit at para. 66.
[36] Guyatt Affidavit at para. 67.
[37] Guyatt Affidavit at para. 68.
[38] Guyatt Affidavit at para. 69.

42. The press release on November 16, 2022 included a summary of the proposed further amendments for which CannTrust Holdings would be seeking Court approval. It also informed interested parties that if they wanted further information they could visit the Proposal Trustee's website, and if they wanted to appear at the approval hearing to support or object to any of the relief sought, they could do so and should contact the Proposal Trustee for further information.[39]

## PART III—ISSUES AND THE LAW

43. The key issues on this motion are:

(a) Should the Court approve the Proposal, including the proposed amendments thereto, and the transactions contemplated therein?

(b) Should the Court approve the Articles of Reorganization?

(c) Should the Court grant an extension of time to hold the AGM?

### *A. The Proposal and Amendments Should be Approved*

44. Pursuant to section 60(5) of the BIA, the Court may either approve or refuse to approve a proposal. Section 59(2) of the BIA requires the Court to refuse to approve a proposal if it is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors.

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[39] Guyatt Affidavit at para. 67.

45. In determining whether to grant approval of a proposal pursuant to section 60(5) of the BIA, the following three factors must be satisfied:

(a) the terms of the Proposal are reasonable;

(b) the terms are calculated to benefit the general body of creditors; and

(c) the proposal is made in good faith.[40]

46. The first two factors are expressly set out in section 59(2) of the BIA. The third factor has been implied by courts as an exercise of equitable jurisdiction. Courts have generally taken into account the interests of the debtor, the interests of the creditors and the interests of the public at large in the integrity of the bankruptcy system.[41]

47. In addition, courts have accorded substantial deference to both the majority vote of creditors at the meeting of creditors and the recommendation of the proposal trustee.[42] If a majority of creditors (substantially in excess of the statutory majority) have voted for acceptance of the proposal, it will take strong reasons for the court to substitute its judgment for that of the creditors.[43]

***(i) The Terms of the Proposal are Reasonable***

48. With respect to the first branch of the test, what is "reasonable" has been determined to mean that the proposal must have a reasonable possibility of being successfully completed in

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[40] *Re Kitchener Frame Ltd*., 2012 ONSC 234 (O.N.S.C. [Commercial List]) [**Kitchener Frame**] at para 19.

[41] *Kitchener Frame* at para. 20.

[42] *Kitchener Frame* at para. 21; *Re Abou-Rached*, 2002 BCSC 1022 (B.C.S.C.) [**Abou-Rached**] at paras 65-66.

[43] *Abou-Rached* at para. 66 citing *Re Gustafson Pontiac Buick Cadillac GMC Ltd.* (1995 CanLII 5775) (SK QB) wherein the Court cited a passage from Houlden & Morawetz, Bankruptcy and Insolvency Law of Canada, 3rd ed. (Toronto: Carswell, 1993).

accordance with its terms.[44] In addition, the proposal must meet the requirements of commercial morality and must maintain the integrity of the bankruptcy system.[45]

49. Nothing in the Proposal offends commercial morality or undermines the integrity of the bankruptcy system. The Proposal is reasonable because (i) it has the support of secured creditors; (ii) it provides for (A) payment in full of unsecured creditors other than Phoena Holdings and its subsidiaries, (B) the satisfaction of CannTrust Holdings' liabilities to Phoena Holdings and its subsidiaries on terms to which they consent, and (C) a distribution of the Phoena Shares to shareholders (subject to certain restrictions) in circumstances when they otherwise would get no recovery; and (iii) it will facilitate the wind down and eventual dissolution of CannTrust Holdings, avoiding ongoing costs to maintain its corporate existence in circumstances when, practically, it is unable to comply with the reporting requirements of the OBCA and applicable securities laws.

50. The amendments proposed in the second amended and restated Proposal are fair and reasonable because they do not affect the treatment of creditors under the Proposal. The amendments are required to clarify the terms governing the distribution of Phoena Shares to CannTrust Shareholders. The CannTrust Shareholders are not prejudiced because the CannTrust Common Shares have no economic value and none of the CannTrust Shareholders would otherwise have any recovery (as discussed further below).

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[44] *Abou-Rached* at para. 68.

[45] *Abou-Rached* at para. 68; *Kitchener Frame* at para. 22.

51. The Proposal also contemplates releasing claims against each Director (as defined in the Proposal) related to the obligations of CannTrust Holdings, including those pursuant to sections 95 to 101 of the BIA which relate to preferential or reviewable transactions.

52. Section 50(13) of the BIA authorizes a compromise of claims against directors that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

53. As part of its statutory duty under section 50(10)(b) of the BIA, the Proposal Trustee reported that it is not aware of any transactions that may be preferential.[46] As such, the release of claims against each Director is reasonable in the circumstances.

### *(ii) The Proposal is Calculated to Benefit the General Body of Creditors*

54. Pursuant to the second branch of the test, the Court must be satisfied that the proposal is calculated to benefit the general body of creditors.[47] The Proposal is calculated to benefit the general body of creditors because it pays them in full or has their consent.

### *(iii) The Proposal is Made in Good Faith*

55. With respect to the third branch of the test, CannTrust is making the Proposal in good faith. CannTrust Holdings has made the Proposal as a means to address its liabilities, dispose of its residual assets and wind down its affairs in an efficient and cost-effective manner and it has made full disclosure to its creditors.

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[46] Report of the Proposal Trustee dated October 25, 2022 [**First Report**] at p. 7.

[47] *Kitchener Frame* at para. 22.

56. Accordingly, CannTrust Holdings submits that the test pursuant to section 60(5) of the BIA is met and the BIA Proposal should be approved by the Court for the following reasons:

(a) its secured creditors have consented to the terms of the Proposal;

(b) the Proposal provides for a 100% recovery by its unsecured creditors (other than Phoena Holdings and its subsidiaries, who have agreed to support the Proposal) compared to, based on the analysis of the Proposal Trustee, an estimated recovery anywhere from zero to 44.45% on their claims in a bankruptcy scenario;[48]

(c) creditors voted unanimously to accept the Proposal;

(d) the Proposal will facilitate the distribution of the Phoena Shares to CannTrust Shareholders, none of whom would otherwise have any recovery in a liquidation or bankruptcy of CannTrust Holdings;

(e) the Proposed Trustee recommends approval of the Proposal; and

(f) without the Proposal and related relief, CannTrust will be in breach of the OBCA for failing to prepare and file audited financial statements and hold an AGM, and will be unable to address its remaining liabilities, dispose of its residual assets and dissolve in an orderly way.

[48] First Report at p. 7.

### *B. The Articles of Reorganization Should be Approved*

57. CannTrust Holdings is seeking approval of the Articles of Reorganization to establish the terms and conditions upon which the Phoena Shares will be distributed to CannTrust Shareholders and to give directors authority to consent to the dissolution of CannTrust Holdings on behalf of the CannTrust Shareholders.

58. This Court has jurisdiction to approve the Articles of Reorganization and it is appropriate and important to do so to facilitate the distribution of the Phoena Shares and the dissolution.

#### *(i) Court Jurisdiction to Approve Articles of Reorganization*

59. Section 59(4) of the BIA provides the following:

> (4) If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

60. Also, pursuant to section 186(2) of the OBCA, if a corporation is subject to a "reorganization" (as defined in the OBCA and which includes an order under the BIA approving a proposal), a corporation's articles may be amended by the court approval order to effect any change that might lawfully be made by an amendment under section 168 of the OBCA.

61. Section 168 of the OBCA gives a corporation broad authority to amend its articles, including to add, change or remove any privileges, restrictions and conditions in respect of its shares.

62. In other cases, courts have approved amendments to constating instruments when approving a BIA proposal, including by means of approving articles of reorganization to effect a reorganization to the capital structure of the debtor.[49]

### *(ii) Distribution of Phoena Shares*

63. In relation to the proposed distribution of the Phoena Shares, the Proposal and Articles of Reorganization are important for three reasons.

#### (a) OBCA Solvency Test for Distributions to Shareholders

64. For so long as CannTrust Holdings is insolvent, it is not in a position to make distributions to its shareholders. Pursuant to section 38(3) of the OBCA, a corporation is prohibited to pay dividends and make other types of shareholder distributions when either the distribution would lead the corporation to be unable to pay its liabilities as they become due or the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and its stated capital of all classes.

65. By implementing the Proposal, CannTrust Holdings will no longer be insolvent when it makes the distribution.

#### (b) Prospectus Exemptions

66. Under applicable securities laws, CannTrust Holdings cannot distribute the Phoena Shares without qualifying the distribution with a prospectus or relying on an available prospectus exemption. By making the distribution in connection with a proposal in an

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[49] *Wiivv Wearables Inc. (Re)*, 2021 BCSC 511 (B.C.S.C.); Order by the Honourable Justice Kershman In the Matter of The Proposal of Clearford Water Systems Inc. dated July 13, 2022; *Fiber Connections Inc. v. SVCM Capital Ltd.*, 2005 CanLII 63760 (O.N.S.C.), leave to appeal granted [**Fiber Connections**]; Proposal from Peloton Pharmaceuticals Inc., 2017 QCCS 1165 (Q.C.C.S. [Commercial Room]) [**Peloton**].

insolvency proceeding, the distribution of the Phoena Shares by CannTrust Holdings to its shareholders in Canada will be exempt from the prospectus requirement pursuant to section 2.11 of National Instrument 45-106 – Prospectus Exemptions.

67. With respect to shareholders in the United States, the *United States Securities Act of 1933* (the "**1933 Act**") provides an exemption from registration for securities issued, other than for cash, under or in connection with an arrangement or proposal where the terms and conditions are approved by a court that is expressly authorized to grant such approval (such as this Court), after a hearing on the substantive and procedural fairness of such terms and conditions at which all persons to whom the securities are proposed to be issued have the right to appear and receive timely notice of the hearing.

68. As described above, the terms of the Proposal are fair and reasonable. CannTrust Holdings has issued press releases advising interested parties, including its shareholders, of the terms of the Proposal and the amendments thereto, and informing them of the hearing date and their entitlement to attend if they want to support or object to any of the relief sought.

69. Qualifying for the registration exemption under the 1933 Act will enable CannTrust Holdings to treat CannTrust Shareholders resident in the United States in a similar manner to CannTrust Shareholders resident in Canada.

**(c) Restrictions on Entitlement to Receive Phoena Shares**

70. In the present circumstances, the CannTrust Common Shares have no economic value. The Residual Assets and Phoena Shares are subject to the secured claims of Cortland and the

Investor Lenders. Further, the amount of the Phoena Claims exceeds any reasonable estimate of the value of the Residual Assets and Phoena Shares.[50]

71. Nevertheless, the secured creditors and Phoena Holdings have consented to the distribution of the Phoena Shares to CannTrust Shareholders as part of an orderly wind-up of CannTrust Holdings. In the case of Phoena Holdings, the distribution will enlarge its shareholder base, which Phoena Holdings believes is of benefit to it (for example, if it later sought to list its shares on a stock exchange), and it will enable CannTrust Shareholders to hold an interest in Phoena Holdings directly rather than indirectly as they do now through an insolvent entity that is unable to fulfil its reporting requirements.[51]

72. However, to make the distribution economically rational and to reduce the potential for adverse consequences, certain restrictions are proposed in the Articles of Reorganization:

(a) the distribution of Phoena Shares is limited to holders of at least 10,000 CannTrust Common Shares;

(b) CannTrust Shareholders who hold their shares in registered plans will not receive any Phoena Shares; and

(c) the distribution will only be made in jurisdictions for which there is a prospectus exemption.

73. These restrictions are reasonable because:

[50] Guyatt Affidavit at para. 72.

[51] Guyatt Affidavit at para. 72.

(a) a minimum number of shares (in this case, 10,000) is appropriate so that the costs of distribution will not significantly exceed the value of the Phoena Shares being distributed. When Phoena Holdings completed the Investment Transaction in March 2022, the common shares were issued at a price of approximate $0.009 per share, implying that 10,000 shares had a value of $90;[52]

(b) Phoena Shares are not permitted investments for the purposes of registered savings plans and other types of investment vehicles;[53]

(c) CannTrust Holdings wants to comply with applicable securities laws.

74. These restrictions are being imposed by Articles of Reorganization because it is neither reasonable nor practical to seek shareholder approval for amendments to CannTrust Holdings' articles (and the share distribution mechanics set out therein).

75. In an insolvency context, courts have held that it is not necessary to provide a vote to shareholders who have no economic interest in a debtor.[54] Consistent with that approach, neither section 59(4) of the BIA nor section 186 of the OBCA requires one.

76. Justice Farley in *Re Stelco*[55] cited with approval the following passage of Paperny J. in *Re Canadian Airlines Corp.*:[56]

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[52] Guyatt Affidavit at para. 56.

[53] Guyatt Affidavit at para. 54(c).

[54] *Unique Broadband Systems (Re),* 2013 ONSC 676 (O.N.S.C.), at para. 54.

[55] *Re Stelco Inc.*, 2006 CanLII 1773 (O.N.S.C.) at para. 15.

[56] *Re Canadian Airlines Corp.*, 2000 ABQB 442 (Alta. C.A.), at paras. 143-145.

> Where a company is insolvent, only the creditors maintain a meaningful stake in its assets. Through the mechanism of liquidation or insolvency legislation, the interests of shareholders are pushed to the bottom rung of the priority ladder. The expectations of creditors and shareholders must be viewed and measured against an altered financial and legal landscape. Shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditors' claims are not being paid in full. It is through the lens of insolvency that the court must consider whether the acts of the company are in fact oppressive, unfairly prejudicial or unfairly disregarded. CCAA proceedings have recognized that shareholders may not have "a true interest to be protected" because there is no reasonable prospect of economic value to be realized by the shareholders given the existing financial misfortunes of the company: Royal Oak Mines Ltd., supra, para. 4., Re Cadillac Fairview Inc., [1995] O.J. No. 707, (March 7, 1995), Doc. B28/95 (Ont. Gen. Div. [Commercial List]), and T. Eaton Company, supra….

77. See also *Fiber Connections*, in which one of the shareholders of the insolvent company was contesting the approval of a BIA proposal on the grounds that the proposed capital reorganization was affecting his rights. Justice Campbell concluded that a shareholder whose interests have no economic value cannot block a reorganization proceeding.[57]

78. Similarly, in *Peloton*, two groups of minority shareholders opposed the approval of a BIA proposal as well as a reorganization pursuant to section 191 of the CBCA.[58] Justice Chatelain found that the lack of interest of the minority shareholders was clear: their shares had no value as the insolvency of the debtor was uncontested.[59] The Court, citing another Quebec CCAA case, further stated: "where a company is insolvent, only the creditors maintain a meaningful stake in the assets… Shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditors' claims are not being

[57] *Fiber Connections*.

[58] *Peloton*.

[59] *Peloton* at paras. 71, 84, 86-89.

paid in full".[60] The Court ultimately found that all the necessary criteria for approval of the proposal and reorganization were met.[61]

79. Since CannTrust Holdings is insolvent, the CannTrust Common Shares have no economic value. It is only through the implementation of the Proposal, which is conditional upon obtaining a Court order approving both the Proposal and the Articles of Reorganization, that there will be value to distribute on the basis set out therein.[62]

80. For these reasons, the Articles of Reorganization and mechanics for distribution of the Phoena Shares are fair and reasonable in the circumstances and should be approved by this Court.

***(iii) Dissolution***

81. For a corporation to voluntarily dissolve, section 237 of the OBCA requires shareholder approval by special resolution or written consent. In the case of CannTrust Holdings, a shareholder meeting to authorize its dissolution is not feasible or practical for the reasons summarized earlier. Amending the articles by way of the Articles of Reorganization to allow any director to consent to dissolution on behalf of CannTrust Shareholders will enable this OBCA requirement to be fulfilled at the relevant time.

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[60] *Peloton* at para. 73 citing *Bouchard c. Société industrielle de décolletage et d'outillage (SIDO) ltée* (2010 QCCS 5997) at para. 55 to 61.

[61] *Ibid* at paras. 114-115.

[62] Proposal, section 1.1(mm) and 3.1(c).

## *C. The AGM Relief Should be Granted*

82. By virtue of the AGM Deadline Extension Order, CannTrust Holdings is required to hold an AGM by November 30, 2022. For the reasons described earlier, it is unable to do so and seeks an order that it is not required to hold an AGM prior to its dissolution.

83. This Court has already extended the AGM deadline once following CannTrust Holdings' exit from CCAA, based on inherent jurisdiction and section 11 of the CCAA.[63]

84. In granting that extension, Justice Penny noted (i) that CannTrust Holdings is governed by the OBCA, which does not expressly contain a provision allowing a corporation to obtain an extension to the deadline for calling an AGM, unlike the CBCA which was amended to close that "perceived functional gap"; (ii) that Ontario courts have exercised their inherent jurisdiction to fill functional gaps in corporate legislation in numerous cases; (iii) that this Court has the jurisdiction to extend the time for CannTrust to call its AGM if the Court concludes that it would be "just and equitable to do so"; and (iv) that in determining whether it is "just and equitable", the Court can look to the principles developed by other courts considering extension requests under the express authority of the CBCA and other statutes, in which context the courts have held it is appropriate to "consider the interests of the company balanced against any meaningful risk of harm to the shareholders arising from the granting of an extension".[64]

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[63] Endorsement of the Honourable Justice Penny in *CannTrust Holdings Inc. et. al. v. Merrill Lynch Canada Inc. et. al.*, Court File No. CV-20-00638930-00CL dated July 7, 2022 [**Endorsement of Justice Penny**]; *Epstein v. First Marathon Inc.*, 2000 CanLII 22797 (O.N.S.C.) at para. 72; *Intertan Canada Ltd. (re)*, 2009 CanLII 2030 (O.N.S.C. [Commercial List]) at para 7, citing *80 Wellesley St. East Ltd. V. Fundy Bay Builders Ltd. Et. Al.*, 1972 CanLII 535 (O.N.C.A); *Stelco Inc. (Bankruptcy), Re*, 2005 CanLII 8671 (O.N.C.A.) at para. 35; *Royal Oak Mines Inc., Re*, 1999 CanLII 14843 (O.N.S.C.) at para. 4; *Montreal, Maine & Atlantique Canada Co. (Arrangement relatif a)*, 2013 QCCS 4039 at para. 21, citing Janis Sarra, "Rescue! The Companies' Creditors Arrangement Act" (Thomson Carswell) at 61-62.

[64] *IMAX Corp., Re*, 2007 CarswellOnt 8860 (O.N.S.C. [Commercial List]) at para. 23; Endorsement of Justice Penny.

85. In the circumstances, there is no practical alternative for the company and no prejudice to CannTrust Shareholders if an AGM is not held prior to CannTrust Holdings' dissolution. To prepare the necessary financial statements and hold an AGM (which CannTrust Holdings does not have the resources to do) would not be a productive use of time and resources, even if feasible.

86. The activities of CannTrust Holdings, until it is dissolved, will be focussed on carrying out the Proposal and the transactions contemplated by it, including the distribution of the Phoena Shares and transferring the Residual Assets to Phoena Holdings (or, in the case of the HST refund, pursuing it and if recovered, paying the proceeds to Phoena Holdings), which will result in the distributions to CannTrust Shareholders as contemplated in the Articles of Reorganization.

87. For the reasons set out above, CannTrust Holdings submits that it is just and equitable to extend the time to hold the AGM, and that it is necessary and appropriate in the circumstances to grant the relief requested on this motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23rd day of November, 2022.

McCarthy Tétrault LLP

Lawyers for CannTrust Holdings

**SCHEDULE "A"**
**LIST OF AUTHORITIES**

| No. | Case |
|---|---|
| 1. | Endorsement of the Honourable Justice Penny in *CannTrust Holdings Inc. et. al. v. Merrill Lynch Canada Inc. et. al.*, Court File No. CV-20-00638930-00CL dated July 7, 2022. |
| 2. | *Epstein v. First Marathon Inc.*, 2000 CanLII 22797 (O.N.S.C.) |
| 3. | *Fiber Connections Inc. v. SVCM Capital Ltd.*, 2005 CanLII 63760 (O.N.S.C.) |
| 4. | *IMAX Corp., Re*, 2007 CarswellOnt 8860 (O.N.S.C. [Commercial List]) |
| 5. | *Intertan Canada Ltd. (re)*, 2009 CanLII 2030 (O.N.S.C. [Commercial List]) |
| 6. | *Montreal, Maine & Atlantique Canada Co. (Arrangement relatif a),* 2013 QCCS 4039 |
| 7. | Order by the Honourable Justice Kershman In the Matter of The Proposal of Clearford Water Systems Inc. dated July 13, 2022 |
| 8. | Proposal from Peloton Pharmaceuticals Inc., 2017 QCCS 1165 (Q.C.C.S. [Commercial Room]) |
| 9. | *Re Abou-Rached*, 2002 BCSC 1022 (B.C.S.C.) |
| 10. | *Re Canadian Airlines Corp.*, 2000 ABQB 442 (Alta. C.A.), |
| 11. | *Re Kitchener Frame Ltd.*, 2012 ONSC 234 (O.N.S.C. [Commercial List]) |
| 12. | *Re Stelco Inc.*, 2006 CanLII 1773 (O.N.S.C.) |
| 13. | *Royal Oak Mines Inc., Re*, 1999 CanLII 14843 (O.N.S.C.) |
| 14. | *Stelco Inc. (Bankruptcy), Re*, 2005 CanLII 8671 (O.N.C.A.) |
| 15. | *Unique Broadband Systems (Re),* 2013 ONSC 676 (O.N.S.C.) |
| 16. | *Wiivv Wearables Inc. (Re)*, 2021 BCSC 511 (B.C.S.C.) |

## SCHEDULE “B”
## RELEVANT STATUTES

**Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3**

**Trustee to monitor and report**

**50 (10)** Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a proposal in respect of an insolvent person shall, for the purpose of monitoring the insolvent person’s business and financial affairs, have access to and examine the insolvent person’s property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person’s business and financial affairs, from the filing of the proposal until the proposal is approved by the court or the insolvent person becomes bankrupt, and shall

- (a) file a report on the state of the insolvent person’s business and financial affairs — containing the prescribed information, if any —
    - (i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person’s projected cash-flow or financial circumstances, and
    - (ii) with the court at any time that the court may order;
- (a.1) send a report about the material adverse change to the creditors without delay after ascertaining the change; and
- (b) send, in the prescribed manner, a report on the state of the insolvent person’s business and financial affairs — containing the trustee’s opinion as to the reasonableness of a decision, if any, to include in a proposal a provision that sections 95 to 101 do not apply in respect of the proposal and containing the prescribed information, if any — to the creditors and the official receiver at least 10 days before the day on which the meeting of creditors referred to in subsection 51(1) is to be held.

**Claims against directors — compromise**

**50 (13)** A proposal made in respect of a corporation may include in its terms provision for the compromise of claims against directors of the corporation that arose before the commencement of proceedings under this Act and that relate to the obligations of the corporation where the directors are by law liable in their capacity as directors for the payment of such obligations.

**Court to hear report of trustee, etc.**

**59 (1)** The court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms thereof and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

**Court may refuse to approve the proposal**

**(2)** Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

**Reasonable security**

**(3)** Where any of the facts mentioned in section 173 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

**Court may order amendment**

**(4)** If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

**Priority of claims**

**60 (1)** No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

**Certain Crown claims**

**(1.1)** Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

- **(a)** subsection 224(1.2) of the *Income Tax Act*;
- **(b)** any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for

the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

- **(c)** any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
  - **(i)** has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
  - **(ii)** is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

**Idem**

**(1.2)** No proposal shall be approved by the court if, at the time the court hears the application for approval, Her Majesty in right of Canada or a province satisfies the court that the debtor is in default on any remittance of an amount referred to in subsection (1.1) that became due after the filing

- **(a)** of the notice of intention; or
- **(b)** of the proposal, if no notice of intention was filed.

**Proposals by employers**

**(1.3)** No proposal in respect of an employer shall be approved by the court unless

- **(a)** it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period; and
- **(b)** the court is satisfied that the employer can and will make the payments as required under paragraph (a).

### Voting on proposal

**(1.4)** For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in paragraph (1.3)(a).

### Proposals by employers — prescribed pension plans

**(1.5)** No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

- **(a)** the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:
  - **(i)** an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,
  - **(ii)** if the prescribed pension plan is regulated by an Act of Parliament,
    - **(A)** an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and
    - **(B)** an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,
    - **(C)** an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and
  - **(iii)** in the case of any other prescribed pension plan,
    - **(A)** an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and
    - **(B)** an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

        - **(C)** an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and
    - **(b)** the court is satisfied that the employer can and will make the payments as required under paragraph (a).

**Non-application of subsection (1.5)**

**(1.6)** Despite subsection (1.5), the court may approve a proposal that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

**Payment — equity claims**

**(1.7)** No proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

**Payment to trustee**

**(2)** All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

**Distribution of promissory notes, stock, etc., of debtor**

**(3)** Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner prescribed in subsection (2) as nearly as may be.

**Section 147 applies**

**(4)** Section 147 applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

**Power of court**

**(5)** Subject to subsections (1) to (1.7), the court may either approve or refuse to approve the proposal.

**Ontario Business Corporations Act, R.S.O. 1990, c. B. 16**

**Declaration of dividends**

**38 (1)** Subject to its articles and any unanimous shareholder agreement, the directors may declare and a corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a corporation may pay a dividend in money or property.

**Stock dividend**

**(2)** If shares of a corporation are issued in payment of a dividend, the corporation may add all or part of the value of those shares to the stated capital account of the corporation maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

**When dividend not to be declared**

**(3)** The directors shall not declare and the corporation shall not pay a dividend if there are reasonable grounds for believing that,

- **(a)** the corporation is or, after the payment, would be unable to pay its liabilities as they become due; or
- **(b)** the realizable value of the corporation's assets would thereby be less than the aggregate of,
  - **(i)** its liabilities, and
  - **(ii)** its stated capital of all classes.

**Amendments**

**168 (1)** Subject to sections 170 and 171, a corporation may from time to time amend its articles to add, change or remove any provision that is permitted by this Act to be, or that is, set out in its articles, including without limiting the generality of the foregoing, to,

- **(a)** change its name;
- **(b)** Repealed: 1994, c. 27, s. 71 (20).
- **(c)** add, change or remove any restriction upon the business or businesses that the corporation may carry on or upon the powers that the corporation may exercise;
- **(d)** add, change or remove any maximum number of shares that the corporation is authorized to issue or any maximum consideration for which any shares of the corporation are authorized to be issued;

- **(e)** create new classes of shares;
- **(f)** Repealed: 1994, c. 27, s. 71 (20).
- **(g)** change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
- **(h)** change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
- **(i)** divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- **(j)** authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
- **(k)** authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
- **(l)** revoke, diminish or enlarge any authority conferred under clauses (j) and (k);
- **(m)** subject to sections 120 and 125, increase or decrease the number, or minimum or maximum number, of directors; and
- **(n)** add, change or remove restrictions on the issue, transfer or ownership of shares of any class or series.

**Idem**

**(2)** Where the directors are authorized by the articles to divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide.

**Revocation of resolution**

**(3)** The directors of a corporation may, if so authorized by a special resolution effecting an amendment under this section, revoke the resolution without further approval of the shareholders at any time prior to the endorsement by the Director of a certificate of amendment of articles in respect of such amendment.

**Change of number name**

**(4)** Despite subsection (1), where a corporation has a number name, the directors may amend its articles to change that name to a name that is not a number name.

**Authorization**

**(5)** An amendment under subsection (1) shall be authorized by a special resolution and an amendment under subsection (2) or (4) may be authorized by a resolution of the directors.

**Special Act corporations excepted**

**(6)** This section does not apply to a corporation incorporated by special Act, except that a corporation incorporated by special Act, including a corporation to which *The Railways Act*, being chapter 331 of the Revised Statutes of Ontario, 1950, applies, may under this section amend its articles to change its name.

**Reorganization**

**186** (1) In this section,

"reorganization" means a court order made under section 248, an order made under the *Bankruptcy and Insolvency Act* (Canada) or an order made under the *Companies Creditors Arrangement Act* (Canada) approving a proposal.

**Articles amended**

**(2)** If a corporation is subject to a reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 168.

**Auxiliary powers of court**

**(3)** Where a reorganization is made, the court making the order may also,

- **(a)** authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms thereof; and
- **(b)** appoint directors in place of or in addition to all or any of the directors then in office.

**Articles of reorganization**

**(4)** After a reorganization has been made, articles of reorganization and any other required documents and information shall be sent to the Director.

**Certificate**

**(5)** Upon receipt of articles of reorganization and any other required documents and information, the Director shall endorse the articles, in accordance with section 273, with a certificate which shall constitute the certificate of amendment, and the articles are amended accordingly.

**No dissent**

**(6)** A shareholder is not entitled to dissent under section 185 if an amendment to the articles is effected under this section.

**Voluntary dissolution**

**237** A corporation may be dissolved upon the authorization of,

- **(a)** a special resolution passed at a meeting of the shareholders of the corporation duly called for the purpose or, in the case of a corporation that is not an offering corporation, by such other proportion of the votes cast as the articles provide, but such other proportion shall not be less than 50 per cent of the votes of all the shareholders entitled to vote at the meeting;
- **(b)** the consent in writing of all the shareholders entitled to vote at such meeting; or
- **(c)** all its incorporators or their personal representatives if the corporation has not commenced business and has not issued any shares.

**Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36**

**General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

**National Instrument 45-106 – Prospectus Exemptions**

**Business combination and reorganization**

**2.11** The prospectus requirement does not apply to a distribution of a security in connection with:

- **(a)** an amalgamation, merger, reorganization or arrangement that is under a statutory procedure,
- **(b)** an amalgamation, merger, reorganization or arrangement that
  - **(i)** is described in an information circular made pursuant to National Instrument 51-102 Continuous Disclosure Obligations or in a similar disclosure record and the information circular or similar disclosure record is delivered to each security holder whose approval of the amalgamation, merger, reorganization or arrangement is required before it can proceed, and
  - **(ii)** is approved by the security holders referred to in subparagraph (i), or
- **(c)** a dissolution or winding-up of the issuer.

**IN THE MATTER OF THE PROPOSAL OF CANNTRUST HOLDINGS INC.**

Court File No.: 31-2875614
Estate No.: 31-2875614

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**IN BANKRUPTCY AND INSOLVENCY**

Proceeding commenced at Toronto

**FACTUM OF CANNTRUST HOLDINGS INC.**
**(Approval of BIA Proposal)**

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